

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08cv322-01-MU

STUART WAYNE TOMPKINS,

Plaintiff,

v.

DEP'T OF CORRECTIONS, et al.,

Defendants.

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ORDER

THIS MATTER is before this Court upon a Complaint pursuant to 42 U.S.C. §1983 which was filed by the Plaintiff pro se. Defendant Mitchell has filed a Motion for Summary Judgment with a supporting brief. It appears that the Defendant may be entitled to summary judgment as a matter of law.

The Plaintiff is advised that under the provisions of Rule 56(e) of the Federal Rules of Civil Procedure, he is required to submit documents, affidavits, or unsworn declarations made under penalty of perjury, in opposition to the Motion for Summary Judgment and supporting documents filed by the Defendant. Rule 56(e) reads in pertinent part as follows:

When a motion for summary judgment is made and supported [by affidavits], an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing that there is genuine issue for trial. If he does not respond, summary judgment, if appropriate, shall be entered against him.

This rule requires that if the Plaintiff has any evidence to offer to counter the evidence contained in the Motion for Summary Judgment and supporting documents filed by the Defendant,

he must present it to the Court in the form of documents, affidavits, or unsworn declarations under penalty of perjury. An affidavit is a written statement made under oath; that is, a statement prepared in writing by the Plaintiff and sworn before a Notary Public. If the Plaintiff chooses, he may instead submit an unsworn declaration and state the following with the date and his signature:

"I declare under penalty of perjury that the foregoing is true and correct."

PLAINTIFF TOMPKINS READ THIS:

The Plaintiff is further hereby advised that he has thirty (30) days from the filing of this Order in which to file documents, affidavits, or unsworn declarations in opposition to the Defendant's Motion for Summary Judgment. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO SUMMARY JUDGMENT.**

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff has thirty(30) days from the filing of this Order in which to provide his own documents, affidavits, or declarations countering the evidence offered by the Defendant's Motion for Summary Judgment.

Signed: March 9, 2009

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

